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June 14, 2013

Via ECF & U.S. Mail

Hon. Kevin McNulty, U.S.D.J.
United States District Court for the District of New Jersey
M.L. King, Jr. Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07101

Re: BanxCorp v. Bankrate, Inc., Civ. No. 07-3398 (KM-MAH)

Dear Judge McNulty:

I write on behalf of Plaintiff BanxCorp in response to Defendant Bankrate's letter to the Court dated May 29, 2013 (Doc. No. 431).

On May 2, 2013, in response to Plaintiff's allegations of fraud with respect to the false academic and professional credentials of Defendant's purported expert Mark Glueck, Defendant stated as follows: "Bankrate asks the Court not to rely upon any of Mr. Glueck's opinions in connection with the pending summary judgment motion. Bankrate is voluntarily withdrawing Mr. Glueck's report from the materials submitted in connection with the pending motion." Defendant's Brief in Opposition to BanxCorp's Rule 56(c)(2) Objections (Doc. No. 419-2), at 2.

However, on June 10, 2013, in a Joint Status Report, at fn4 (Doc. No. 433), Defendant revoked its previous withdrawal of the Glueck Reports by stating that, "BanxCorp incorrectly, and hysterically identifies [the Glueck Reports] as having been withdraw[n]..."

Plaintiff's pending Rule 56(c)(2) Objections (Doc. Nos. 417-2, and 421, at 2-3), i.e., its motions to strike the Glueck Reports (and related citations, exhibits and statements) are far from moot. The Glueck Reports on issues of liability – covering all causes of action and ultimate issues in the case – as well as damages, contained fraudulent misrepresentations and raised credibility issues and questions of fact, which foreclose summary judgment in Defendant's favor. Consideration must be given to Defendant's fraud on the Court. The seminal case is *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944).

Thus, Plaintiff believes that Defendant's motion for summary judgment, and its opposition to Plaintiff's summary judgment motion, are fatally defective on their face and moot.

Respectfully submitted,

s/Lawrence C. Hersh
Lawrence C. Hersh

cc. Hon. Michael A. Hammer, U.S.M.J. (*via ECF & U.S. Mail*)
All Counsel (*via ECF*)